



NATIONAL ARCHIVES

December 12, 2018

Steven A. Engel
Assistant Attorney General
Office of Legal Counsel
United States Department of Justice
Washington, DC 20530
BY EMAIL

Dear Mr. Engel:

The Archivist of the United States has been asked by Members of Congress to inform them as to what actions he would take in the event that a 38th state ratifies the Equal Rights Amendment to the United States Constitution (ERA). The Archivist indicated that under 1 U.S.C. § 106b, he would be expected to publish the amendment to the Constitution when the requisite number of states have ratified it, but noted that he would first need to seek counsel from the Office of Legal Counsel (OLC).

The ERA was approved by Congress for ratification in 1972, with a seven-year deadline for ratification. In 1978, Congress extended the deadline to 1982. By 1973, 35 states had ratified the ERA. Between 1973 and 1979, five of those states purported to rescind their ratifications. In 2017, a 36th state ratified the ERA, and in May 2018, a 37th state did so (see attached list of state actions). It is our understanding that several other states are considering ratification of the ERA, which could lead to 38 or more states having ratified it. (See attached June 18, 2018, Congressional Research Service Report on “The Proposed Equal Rights Amendment: Contemporary Ratification Issues.”)

Section 106b of Title I, United States Code, establishes certain responsibilities of the Archivist of the United States with respect to the publication and certification of amendments to the Constitution, as follows:

Whenever official notice is received at the National Archives and Records Administration that any amendment proposed to the Constitution of the United States has been adopted, according to the provisions of the Constitution, the Archivist of the United States shall forthwith cause the amendment to be published, with his certificate, specifying the States by which the same may have been adopted, and that the same has become valid, to all intents and purposes, as a part of the Constitution of the United States.

NATIONAL ARCHIVES *and*
RECORDS ADMINISTRATION

8601 ADELPHI ROAD
COLLEGE PARK, MD 20740-6001
www.archives.gov

GARY M. STERN
GENERAL COUNSEL

Suite 3110
t. 301.837.3026
garym.stern@nara.gov

In 1991, when it appeared that a 38th state could ratify the Congressional Pay Amendment, NARA contacted OLC with respect to the Archivist's role under 1 U.S.C. § 106b, and in 1992, the Office of Legal Counsel issued an opinion on what became the 27th Amendment to the Constitution. We now request that OLC provide the Archivist with guidance on his role under 1 U.S.C. § 106b in the event that 38 or more states ratify the Equal Rights Amendment.

Please feel free to contact me to discuss further.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gary M. Stern', with a long horizontal flourish extending to the right.

GARY M. STERN
General Counsel

Enc.